

AMENDED IN ASSEMBLY MARCH 22, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1571

Introduced by Assembly Member Donnelly

February 1, 2012

An act to ~~add Section 653.65 to amend Sections 236.1 of, and to add Section 261.3 to, the Penal Code, relating to human—smuggling trafficking.~~

LEGISLATIVE COUNSEL’S DIGEST

AB 1571, as amended, Donnelly. Crimes: human—~~smuggling trafficking.~~

Under existing law, a person who deprives or violates the personal liberty of another with intent to effect or maintain specified felonies, *including pandering or extortion*, or to obtain forced labor or services, is guilty of human trafficking, ~~which is a felony~~. *Under existing law, a person convicted of human trafficking is punished by imprisonment in a state prison for 3, 4, or 5 years, unless the victim is under 18 years of age in which case the term of imprisonment is 4, 6, or 8 years. Existing law requires a fine of \$100,000 when a person is convicted of human trafficking involving a commercial sex act and the victim is under 18 years of age.*

~~Existing law makes it a misdemeanor for a person for compensation to knowingly make a false or misleading material statement or assertion of fact in the preparation of an immigration matter that is detrimentally relied upon by another. Existing law makes violations of these provisions liable for civil penalties.~~

~~This bill would make it a felony, punishable by imprisonment in a state prison for 16 months or 2 or 3 years, for a person to intentionally~~

~~engage in the smuggling of a human being for profit or commercial purpose. The bill would make it a felony punishable by imprisonment in a state prison for 5, 7, or 10 years if the person being smuggled is under 18 years of age and is not accompanied by a family member over 18 years of age, or the offense involves the use of a weapon designed for lethal use, as defined. If the offense involves the use or threatened use of deadly physical force, the punishment would be 3, 5, or 7 years in a state prison and the defendant would not be eligible for suspension of sentence, probation, or other release from custody, except as specified, until his or her sentence is served. The bill would impose a 10-year sentence enhancement for committing a specified offense, including a lewd or lascivious act, during the smuggling of a human being. By creating a new crime, this bill would impose a state-mandated local program.~~

This bill would make the crime of human trafficking, where the victim is an adult and the crime involves a commercial sex act, punishable by 10, 12, or 14 years in state prison and, where the victim is a minor and the crime involves a commercial sex act, punishable by 25 years to life in a state prison.

Existing law defines rape and unlawful sexual intercourse with a minor and prescribes penalties for these crimes.

This bill would require a person who commits one of these crimes while in the process of committing human trafficking or human smuggling, as defined, to be punished by an additional 10 years in state prison. The bill would also require all time to be served in state prison, including time for the underlying offense that would ordinarily be served in county jail. By creating a new crime and increasing duties for local prosecutors, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 236.1 of the Penal Code is amended to
2 read:

1 236.1. (a) ~~Any~~A person who deprives or violates the personal
2 liberty of another with the intent to effect or maintain a felony
3 violation of Section 266, 266h, 266i, 267, 311.4, or 518, or to
4 obtain forced labor or services, is guilty of human trafficking.

5 (b) (1) Except as provided in ~~subdivision (e)~~ paragraph (2),
6 (3), or (4), a violation of this section is punishable by imprisonment
7 in the state prison for three, four, or five years.

8 ~~(e)~~

9 (2) A violation of this section where the victim of the trafficking
10 was under 18 years of age at the time of the commission of the
11 offense, *but where the crime did not involve a commercial sex act*,
12 is punishable by imprisonment in the state prison for four, six, or
13 eight years.

14 (3) *A violation of this section where the victim of the trafficking*
15 *was 18 years of age or older and where the human trafficking*
16 *involved a commercial sex act shall be punishable by imprisonment*
17 *in the state prison for 10, 12, or 14 years.*

18 (4) *A violation of this section where the victim of the trafficking*
19 *was under 18 years of age at the time of the commission of the*
20 *offense and the human trafficking involved a commercial sex act*
21 *shall be punishable by imprisonment in the state prison for 25*
22 *years to life.*

23 ~~(d)~~

24 (c) (1) For purposes of this section, unlawful deprivation or
25 violation of the personal liberty of another includes substantial
26 and sustained restriction of another's liberty accomplished through
27 fraud, deceit, coercion, violence, duress, menace, or threat of
28 unlawful injury to the victim or to another person, under
29 circumstances where the person receiving or apprehending the
30 threat reasonably believes that it is likely that the person making
31 the threat would carry it out.

32 (2) Duress includes knowingly destroying, concealing,
33 removing, confiscating, or possessing ~~any~~ an actual or purported
34 passport or immigration document of the victim.

35 ~~(e)~~

36 (d) For purposes of this section, "forced labor or services" means
37 labor or services that are performed or provided by a person and
38 are obtained or maintained through force, fraud, or coercion, or
39 equivalent conduct that would reasonably overbear the will of the
40 person.

1 ~~(f)~~

2 (e) The Legislature finds that the definition of human trafficking
3 in this section is equivalent to the federal definition of a severe
4 form of trafficking found in Section 7102(8) of Title 22 of the
5 United States Code.

6 ~~(g)~~

7 (f) (1) In addition to the penalty specified in *paragraph (4) of*
8 *subdivision (e) (b), any a person who commits human trafficking*
9 *involving a commercial sex act where the victim of the human*
10 *trafficking was under 18 years of age at the time of the commission*
11 *of the offense shall be punished by a fine of not more than one*
12 *hundred thousand dollars (\$100,000).*

13 (2) As used in this ~~subdivision~~ *section*, “commercial sex act”
14 means any sexual conduct on account of which anything of value
15 is given or received by any person.

16 ~~(h)~~

17 (g) Every fine imposed and collected pursuant to this section
18 shall be deposited in the Victim-Witness Assistance Fund to be
19 available for appropriation to fund services for victims of human
20 trafficking. At least 50 percent of the fines collected and deposited
21 pursuant to this section shall be granted to community-based
22 organizations that serve victims of human trafficking.

23 SEC. 2. *Section 261.3 is added to the Penal Code, to read:*

24 261.3. (a) *A person who commits a violation of Section 261*
25 *or 261.5 while in the process of committing a violation of Section*
26 *236.1, or while conducting a human smuggling operation shall be*
27 *punished by 10 years in a state prison. This penalty shall be in*
28 *addition to other penalties applied under law.*

29 (b) *If the violation of Section 261.5 would otherwise be served*
30 *in a county jail and if the enhancement provided in this section is*
31 *imposed all time shall be served in state prison.*

32 (c) *For purposes of this section, “human smuggling” means*
33 *the importation of people into the country via the deliberate evasion*
34 *of immigration laws. This includes bringing illegal aliens into the*
35 *country, as well as the unlawful transportation and harboring of*
36 *aliens already in the country illegally.*

37 SEC. 3. *No reimbursement is required by this act pursuant to*
38 *Section 6 of Article XIII B of the California Constitution because*
39 *the only costs that may be incurred by a local agency or school*
40 *district will be incurred because this act creates a new crime or*

1 *infraction, eliminates a crime or infraction, or changes the penalty*
2 *for a crime or infraction, within the meaning of Section 17556 of*
3 *the Government Code, or changes the definition of a crime within*
4 *the meaning of Section 6 of Article XIII B of the California*
5 *Constitution.*

6 ~~SECTION 1. Section 653.65 is added to the Penal Code, to~~
7 ~~read:~~

8 ~~653.65. (a) Except as provided in subdivisions (b) and (c), it~~
9 ~~is a felony punishable by imprisonment in a state prison for 16~~
10 ~~months or 2 or 3 years for a person to intentionally engage in the~~
11 ~~smuggling of a human being for profit or commercial purpose.~~

12 ~~(b) It is a felony punishable by imprisonment in a state prison~~
13 ~~for 5, 7, or 10 years if the human being who is smuggled is under~~
14 ~~18 years of age and is not accompanied by a family member over~~
15 ~~18 years of age or the offense involved the use of a weapon~~
16 ~~designed for lethal use, including a firearm or an instrument that,~~
17 ~~under the circumstances in which it is used or threatened to be~~
18 ~~used, is readily capable of causing death or serious physical injury.~~

19 ~~(c) It is a felony punishable by imprisonment in the state prison~~
20 ~~for three, five, or seven years if the offense involves the use or~~
21 ~~threatened use of deadly physical force, and the defendant shall~~
22 ~~not be eligible for suspension of sentence, probation, or release~~
23 ~~from confinement on another basis, except for participation in a~~
24 ~~work release program, until the sentence imposed by the court is~~
25 ~~served, the sentence is commuted, or a pardon is granted.~~

26 ~~(d) It is a felony punishable by life in prison for a person to~~
27 ~~violate subdivision (a) by smuggling a minor into or through this~~
28 ~~state for the purpose of sexual slavery.~~

29 ~~(e) A person who violates this section, and during the course of~~
30 ~~that violation, commits an offense listed in subdivision (c) of~~
31 ~~Section 667.61 shall receive an additional sentence of 10 years~~
32 ~~imprisonment in the state prison for the violation of this section,~~
33 ~~and the sentence under this section shall be consecutive to any~~
34 ~~sentence for the offense listed in subdivision (c) of Section 667.61.~~

35 ~~(f) Notwithstanding any other law, a peace officer may lawfully~~
36 ~~stop a person who is operating a motor vehicle if the officer has~~
37 ~~reasonable suspicion to believe the person is in violation of a civil~~
38 ~~traffic law and this section.~~

39 ~~(g) For purposes of this section, "family member" means a~~
40 ~~person's parent, grandparent, sibling, or another person who is~~

1 related to the person by consanguinity or affinity to the second
2 degree.

3 (h) For purposes of this section, “procurement of transportation”
4 means participation in or facilitation of transportation, including,
5 but not limited to, all of the following:

6 (1) Providing services that facilitate transportation including
7 travel arrangement services or money transmission services.

8 (2) Providing property that facilitates transportation, including,
9 but not limited to, a weapon, vehicle, or other means of
10 transportation or false identification, or the selling, leasing, renting,
11 or otherwise making available a drop house.

12 (i) For purposes of this section, “smuggling of a human being”
13 means the transportation, procurement of transportation, or use of
14 property or real property by a person or an entity that knows or
15 has reason to know that the person or persons transported or to be
16 transported are not United States citizens, permanent resident
17 aliens, or persons otherwise lawfully in this state or have attempted
18 to enter, entered, or remained in the United States in violation of
19 law.

20 (j) For purposes of this section, “drop house” means property
21 or real property that is used to facilitate the smuggling of a human
22 being.

23 SEC. 2. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.